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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

07 CR 757 (RJS)

5 TIMOTHY ARCHER, also known as
6 MatoorM,7 Defendant.
-----x8
9 New York, N.Y.
10 January 16, 2008
11 11:15 a.m.

12 Before:

13 HON. RICHARD J. SULLIVAN,

14 District Judge

15 APPEARANCES

16 MICHAEL J. GARCIA

17 United States Attorney for the
Southern District of New York

MICHAEL MAX ROSENSAFT

18 Assistant United States Attorney

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19 610 Adams Street
Toledo, OH 43604

20 Attorney for Defendant Archer

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1 . . . (In open court; case called)

2 THE DEPUTY CLERK: Counsel, state appearances for the
3 record, please.

4 MR. ROSENSAFT: Good morning, your Honor. Michael
5 rose even saft for the government.

6 THE COURT: Mr. Rosensaft, good morning.

7 MR. KURT: Your Honor, Thomas Kurt, 610 Adams Street,
8 Toledo, Ohio, representing Mr. Archer. I'm admitted to the
9 court pro hac vice on this case, also, with the appearance of
10 Mr. Donald Yannella.

11 THE COURT: All right. Mr. Kurt, good morning.
12 Mr. Archer, good morning to you.

13 THE DEFENDANT: Good morning, your Honor.

14 THE COURT: Please have a seat. I am fighting
15 laryngitis or something, so I don't normally sound this way,
16 and I apologize.

17 We're here for sentence. I should note for the record
18 this is the first time Mr. Archer is appearing in front of me.
19 This matter was previously assigned to Judge Karas. On
20 August 14 of 2007 Mr. Archer entered a plea of guilty before
21 Magistrate Judge Peck, I believe, to Counts One and Two of the
22 indictment. Sometime after that in September or October, this
23 matter was reassigned to me.

24 I will say under normal circumstances I do not like to
25 be meeting a defendant for the first time the day of

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1 sentencing, which is why I don't refer guilty pleas to
2 magistrate judges. If that's true under normal circumstances,
3 I think it's even more true in this case, which I think is
4 atypical in many ways.

5 So I am prepared to go forward with sentencing, and
6 I'll tell you candidly, I've spent a great deal of time
7 reviewing everything that's been submitted, reviewing the case
8 materials and thinking long and hard about this case, but I
9 want to let the parties know that I certainly reserve the
10 right, in light of what transpires here today, what arguments I
11 hear and what information I'm given, to put off this sentencing
12 so I can further consider the issues here because I view this,
13 frankly, as an atypical sentencing, and there's a lot of things
14 I want to hear from counsel and from Mr. Archer as well.

15 I know Mr. Archer has traveled a great distance. I
16 know he's waited a long time. He probably is looking for some
17 closure in this matter, but I assume all the parties would
18 agree it's in everyone's interest that I have the time I need
19 to really consider all the issues and all the arguments. So I
20 may do that depending on how things go. Anyone who objects to
21 that?

22 MR. ROSENSAFT: None from the government, your Honor.

23 MR. KURT: Your Honor, no objection for Mr. Archer.
24 Thank you.

25 THE COURT: In the first instance I should accept the

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1 guilty plea, which has not yet happened. I have reviewed the
2 transcript. I've reviewed the plea agreement of the plea that
3 was taken Magistrate Judge Peck. Magistrate Judge Peck in the
4 transcript recommends that the plea be accepted. Do counsel
5 agree with the recommendation of Magistrate Judge Peck that
6 this plea should be accepted?

7 MR. ROSENSAFT: The government does, your Honor.

8 THE COURT: Mr. Kurt?

9 MR. KURT: Likewise for Mr. Archer, your Honor. Thank
10 you.

11 THE COURT: Having reviewed the transcript, having
12 reviewed the plea agreement and minutes, I find that
13 Mr. Archer's plea was entered knowingly and voluntarily; that
14 he understood and waived his rights before entering his plea;
15 and there was an independent basis in fact for each of the
16 elements of the offenses to which he pleaded guilty. I,
17 therefore, accept his guilty plea and find him guilty on Counts
18 One and Two of the indictment. Now we have that.

19 With respect to sentencing, let me tell you what I
20 have and what I have reviewed. I have received and reviewed
21 the PSR and the recommendation which is dated January 4 of
22 2008. I have received and reviewed the January 8, 2008 letter
23 of Mr. Kurt, which included the May 9, 2007 mental health
24 evaluation of Mr. Archer prepared by Marilyn Logsdon. It also
25 included the January 2 psychiatric summary prepared by

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1 Dr. Gregory Forgac. Mr. Kurt, do you know?

2 MR. KURT: That is right, your Honor.

3 THE COURT: I have reviewed letters to the court from
4 family members and friends of Mr. Archer, including William P.
5 Harmon. It's handwritten, so I'm not sure if I read it
6 correctly. It looked like Mr. William P. Harmon, who is a
7 family friend of Mr. Archer and his family. Mr. Archer's wife,
8 Thora Archer; Mr. Archer's daughter, Melissa Ann Cross;
9 Mr. Archer's son, Matt Archer; Mr. Archer's other son, Timothy
10 Archer, Jr. and Mr. Archer himself. I've also reviewed the
11 defendant's January 8, 2008 sentencing memorandum. Reviewed
12 the government's January 10, 2008 response to Mr. Kurt's
13 submission. And Mr. Kurt's January 11, 2008 reply to the
14 government's submission. Let me take two minutes.

15 (Recess)

16 THE COURT: Sorry about that. In any event, those are
17 the things I have. The last thing I mentioned was reply to the
18 government's submission that was dated January 11 from
19 Mr. Kurt. Is there anything else any party believes I should
20 have in connection with sentencing? Mr. Rosensaft?

21 MR. ROSENSAFT: No, your Honor.

22 THE COURT: Mr. Kurt?

23 MR. KURT: No, your Honor.

24 THE COURT: Mr. Kurt, have you received a copy of the
25 presentence report?

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1 MR. KURT: Yes, I have.

2 THE COURT: Read it and discussed it with Mr. Archer?

3 MR. KURT: Yes.

4 THE COURT: Mr. Archer, have you had sufficient time
5 to read the presentence report and discuss it with your
6 attorney, Mr. Kurt?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Kurt, does your client have any
9 objections to the report?

10 MR. KURT: Not formal objections, your Honor, other
11 than the comments that we've made in our sentencing papers, but
12 no objection.

13 THE COURT: Right, and those we'll talk about, but no
14 objections.

15 MR. KURT: Yes.

16 THE COURT: Mr. Rosensaft, have you on behalf of the
17 government had a chance to review the PSR?

18 MR. ROSENSAFT: Yes, your Honor, and the government
19 has no objections.

20 THE COURT: As you all know, pursuant to *United States*
21 *v. Booker*, the Sentencing Guidelines are advisory.

22 Nevertheless, it's necessary to go through the guidelines
23 calculation as probation has calculated it. The advisory
24 guideline range for each count is level 30 with a Criminal
25 History Category of I, which results in a Sentencing Guideline

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1 range of 97 to 121 months, which is Zone D. That's a little
2 different than what was in the plea agreement, as I understand
3 it. The plea agreement seemed to have a different calculation
4 for Count Two, and the PSR has concluded that actually by
5 virtue of Section 2G2.2, that that section applies to both of
6 the counts, and, therefore, the same guidelines application
7 applies to each. Do I have that right?

8 MR. ROSENSAFT: Your Honor, I believe the only
9 difference between the presentence report and the plea
10 agreement was the high end of the guidelines range, whether
11 it's 121 or 120 months.

12 THE COURT: Well, I'm looking at the guidelines range,
13 and on page 4 of the PSR, footnote one, says: The offense
14 level for Count Two would actually also be determined by 2G2.2
15 as the offense level involved the distribution, possession of
16 material involving the sexual exploitation of a minor.

17 MR. ROSENSAFT: That's correct, your Honor. I just
18 meant to say that the actual guidelines range wasn't different
19 between the plea agreement and the PSR.

20 THE COURT: Well, right, the cumulative one, but
21 there's a difference with respect to the guideline calculation
22 for Count Two.

23 MR. ROSENSAFT: That's right, your Honor.

24 THE COURT: So everybody agrees that actually
25 probation got it right and the plea agreement got it wrong?

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1 MR. ROSENSAFT: Yes, your Honor.

2 THE COURT: As you pointed out, Mr. Rosensaft, there's
3 a ten year statutory maximum here. The range is 97 to 121 and
4 so on any one count, it would be topped at 120. However, by
5 virtue of the Sentencing Guidelines, I can structure the
6 sentences consecutively so that the additional time could be
7 served, if I were inclined to impose a sentence of 121 months
8 or greater, I could do so by virtue of a consecutive sentence.

9 MR. ROSENSAFT: That's correct, your Honor.

10 THE COURT: No objection to that, Mr. Kurt?

11 MR. KURT: No, your Honor, I think that's a correct
12 statement of law.

13 THE COURT: In terms of the actual advisory
14 calculation, I agree with the probation department, and I adopt
15 its finding, which is set forth in paragraphs 19 through 33.
16 Those paragraphs provide that Counts One and Two are grouped
17 together pursuant to Section 3D1.2(d); that the base offense
18 level is 18 for the offenses involved; that two levels would be
19 added pursuant to 2G2.2(b)(2) as the offense involved a
20 prepubescent minor or a minor who had not attained the age of
21 12, two levels; a five-level enhancement because the offense
22 involved distribution of materials to a minor pursuant to
23 2G2.2(b)(3)(C); four-level enhancement because the offense
24 involved material that portrays sadistic or masochistic conduct
25 or other depictions of violence; another two-level enhancement

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1 pursuant to 2G2.2(b)(6) as the offense involved the use of a
2 computer; another two-level enhancement pursuant to
3 2G2.2(b)(7)(A) as the defendant possessed at least 10, but
4 fewer than 150 images of child pornography. I find there's no
5 victim related adjustments, no adjustment role in the offense;
6 no adjustment for obstruction of justice, for an adjusted
7 offense level of 33. In addition, I find that the defendant
8 has accepted responsibility meriting a three level departure
9 pursuant to 3E1.1(a) and (b). That leaves an adjusted offense
10 level of 30. And a total offense level of 30. With respect to
11 the criminal history, I find the defendant has no criminal
12 history points and is therefore in Criminal History Category I.

13 So, those are my findings. That guideline analysis
14 would yield a range, as probation department has indicated, of
15 97 to 121 months.

16 I have a question here with respect to supervised
17 release. The plea agreement indicates, and I think that
18 probation report also indicates, that there's a maximum of
19 three years of supervised release. Is that correct. I'm
20 asking both parties on this. That's what the plea agreement
21 says.

22 MR. ROSENSAFT: I believe that is correct, your Honor.

23 THE COURT: The guidelines would call for, for certain
24 types of offenses, a lifetime of supervised release. So my
25 question is: Where the sentencing maximum for supervised

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1 release is three years, is it appropriate to then stack the
2 three-year terms so that a six-year term of supervised release
3 could be imposed? Do you know the answer to that,
4 Mr. Rosensaft?

5 MR. ROSENSAFT: I don't off the top of my head, your
6 Honor. I'm happy to try to find out quickly.

7 THE COURT: Mr. Kurt, do you?

8 MR. KURT: Your Honor, I think I'll just kind of jump
9 ahead and tell you that Mr. Archer would welcome any amount of
10 supervised release. I understand there may or may not be some
11 prison evolved, but he would welcome any amount of supervised
12 release that would possibly allow the Court to go lower on the
13 prison end, if not strictly to impose supervised release, so we
14 would certainly stipulate today that the Court could stack
15 those three year terms of supervised release.

16 THE COURT: I appreciate that. I understand the
17 point.

18 MR. KURT: I understand the distinction the Court is
19 seeking. I honestly don't have an answer to the legal question
20 that I can offer.

21 THE COURT: All right. Well, with respect to the
22 sentencing range 97 to 121, obviously, that is advisory. So I
23 have to consider that in light of the factors set forth in
24 Title 18 Section 3553(a) as to whether I should impose a
25 nonguideline sentence in light of those considerations.

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1 Mr. Kurt has submitted -- and I want to commend you, Mr. Kurt,
2 I thought what you submitted was very helpful, very thorough,
3 very well-written, frankly.

4 MR. KURT: Thank you, your Honor.

5 THE COURT: The use of an any sentencing memorandum
6 and letters arguing for a sentence below the guidelines range
7 based upon the history and characteristics of your client and
8 the offense, the nature and circumstances of the offense.
9 You've also identified the other factors that are set forth in
10 3553(a). And I want to hear you with respect to that. You
11 have recommended or asked for a sentence of one year
12 incarceration followed by a term of one year home confinement
13 and then supervised release of an unspecified term with various
14 mental health monitoring, etc.

15 So, I want to hear you with respect to the factors
16 that are identified for consideration under 3553(a), how are
17 those cut with respect to the guideline sentence which is
18 obviously very high and much higher than what you recommended.
19 So let me hear you on that

20 MR. KURT: Yes, your Honor. Your Honor, I will tie
21 this into the Section 3553, but I guess I would just like to
22 speak generally for the moment if that's OK.

23 THE COURT: Take as much time as you need. I'm not
24 going to rush you. I may jump in and ask you some questions.

25 MR. KURT: That will be fine. I'd like to preface any

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1 mitigation comments to the Court that we are speaking in
2 mitigation. That doesn't mean that we're minimizing what
3 happened. We're not minimizing the very serious nature of this
4 offense, but I am speaking in mitigation for Mr. Archer, but I
5 can tell you without hesitation that he fully accepts that this
6 is a very serious offense. Quite frankly, at the end of the
7 day, for him when he analyzes what he has done off and on and
8 what he did, he finds his own behavior quite repugnant, and
9 he's made that very clear to me in the meetings at my office,
10 and I can't make that clear enough to the Court.

11 Judge, you have before you a 61-year-old man who is
12 retired, who's had absolutely no criminal history whatsoever.
13 I'm sure the Court is familiar with the case of Gall v. United
14 States, which in many respects gives this Court a great deal of
15 discretion in fashioning the sentence. I bring that case up
16 particularly because Gall actually involved a defendant kind of
17 at the opposite end of where Mr. Archer stands. Gall involved
18 a very young man who made also a very serious mistake in his
19 life, and he had the opportunity in a pretty short period of
20 time to demonstrate to the sentencing court, the district
21 court, that he was somebody who not only who could be
22 rehabilitated but was well on his way to being rehabilitated.

23 Here we kind of have the opposite. We have a
24 gentleman who's 61-years-old. He's toward the end of his life,
25 but what the Court has and what the Court can go on is

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1 Mr. Archer's lifetime and what he's done in his lifetime as
2 evidenced by his lack of criminal record, as evidenced by his
3 work history, which was one job 30 years straight at the
4 Whirlpool Factory.

5 THE DEFENDANT: Over 38 years excuse me.

6 MR. KURT: Yes, 38 years, excuse me, in Findlay, Ohio.
7 Of course, the Court has the letters before it from his wife,
8 from his children, who also obviously find his behavior
9 repugnant. They do. I can't sugar-coat that. And it would be
10 easy enough for anybody to look at what happened here and just
11 want to turn their back on Mr. Archer. That has not occurred
12 in this case. His wife, his children, his friend, they have
13 all forgiven him, much more so than he's forgiven himself,
14 quite frankly. It's going to take a long time for him to do
15 that.

16 So, you have before you a man who has a record in the
17 sense that his life is complete in many respects, and the Court
18 can see what kind of a life he has made other than this
19 terrible mistake that he recently made.

20 Your Honor, in sentencing him, I guess I would ask the
21 Court to seek some balance. I know -- obviously, we just
22 discussed what the guideline range is here. It's a very high
23 sentence that is suggested by the guidelines. And the Court is
24 going to have to somehow balance that against -- and this is
25 what is called for, quite frankly, in Section 3553 is to

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1 balance that against the actual characteristics of Mr. Archer
2 and what he actually did and what his attitude right now is
3 with respect to what he did.

4 What he did, I don't want to go into all the details,
5 but obviously there was possession of child pornography, and
6 I'll be very frank with the Court. Mr. Archer's view of all of
7 this gets somewhat muddled up just by the fact that he feels
8 very guilty that he looked at any pornography at all. And he
9 did this off and on using the computer and the internet, I
10 guess, really for a relatively short time after he retired and
11 he had, I guess, too much time on his hands, one could say.
12 And so he would go through these periods where he would view
13 pornography and then feel guilty about it, then delete the
14 pornography from his computer. More than once he went through
15 that process. What happened here, of course, is that he seems
16 to have crossed -- he did, he crossed the line when he made
17 some communications with somebody who he thought was a
18 teenager, who was not a child, and I don't want to get -- I
19 don't want to split too many hairs here, but he thought he was
20 dealing with a teenager, and he made some very inappropriate
21 sexual comments to what he believed was a teenager.

22 THE COURT: Well, a 14 year old. So a very --

23 MR. KURT: Very young, yeah.

24 THE COURT: Very young.

25 MR. KURT: And, again, I'm not going to -- I

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1 understand what the Court is saying, and I agree. What the
2 Court needs to know, and I think is very important, and much of
3 my effort here would be to let you know that he had absolutely
4 no intention of meeting up with a 14-year-old girl, of doing
5 anything to a 14-year-old, of acting out on any of this. I'm
6 not sure that I can characterize it as simply nothing about
7 fantasy, and I am confident, your Honor, and I hope that you'll
8 be able to sense from Mr. Archer that there was absolutely no
9 intent to go any further than what did, wrong as it was.

10 THE COURT: Let me ask you this: It's not clear to me
11 from the record as to when this conduct began, i.e. sort of
12 collecting or downloading images, pornographic images, on his
13 computer, when that began, when the child pornography became a
14 part of that and to what extent it stopped and started on
15 multiple occasions.

16 MR. KURT: Your Honor, I think maybe you could ask
17 Mr. Archer that, but my impression is that this began after he
18 retired and when he had time for these things, when he had time
19 at home. More or less his wife was there, but in some other
20 part of the home. That's my impression. You may want to
21 address Mr. Archer directly about that.

22 THE COURT: The other question I have then is sort of
23 collecting certain images is obviously a crime when it involves
24 minors --

25 MR. KURT: That's right.

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1 THE COURT: -- but the conduct then sort of morphed
2 into being in chat rooms and then talking to a person he
3 believed to be a minor.

4 MR. KURT: Right.

5 THE COURT: And I'm not sure whether there is evidence
6 forensically whether this was an isolated incident or whether
7 this was something that was common, and we don't know how many
8 other 14-year-olds he may have talked to.

9 MR. KURT: OK. I cannot answer that. Again, I would
10 suggest maybe Mr. Archer could answer that directly.

11 THE COURT: Let me interrupt you for a second and see
12 if the government can enlighten me at all.

13 Mr. Rosensaft, the computer was seized, the hard drive
14 was examined, images were lifted off the hard drive that had
15 been deleted from the computer, and I understand how that
16 works. I don't know, frankly, forensically whether one can
17 determine from a computer whether there had been sessions,
18 communication sessions in a chat room on multiple occasions.
19 Do you know the answer to that?

20 MR. ROSENSAFT: Your Honor, when the agents examined
21 the computer, they didn't discover any other such sessions. My
22 understanding is it would only be on the computer if he had
23 recorded them or he had saved them somehow, and Mr. Archer
24 deleted or tried to delete all of these pictures.

25 THE COURT: Well, the pictures I get. But he sent an

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1 e-mail or e-mails to the undercover whom he believed to be a
2 14-year-old, and he used e-mail for that, correct?

3 MR. ROSENSAFT: That's correct. It started off, I
4 believe, as an instant messaging. Then they connected into a
5 chat room.

6 THE COURT: Is there other indicia of instant
7 messaging or communications in a chat room with persons other
8 than the undercover?

9 MR. ROSENSAFT: We have no evidence of that.

10 THE COURT: Would you by examining the computer or is
11 that something that is beyond the ability of forensics to
12 assess?

13 MR. ROSENSAFT: It would if it existed still in the
14 temporary internet files or other such files of the computer.
15 I don't know -- I never received from the agent the time
16 period, for instance, of how long the temporary internet files
17 went back to, so I don't know how far they were able to look
18 back to see if any of those existed. I could certainly find
19 out for your Honor.

20 THE COURT: Well, I may ask you to do that. With
21 respect to the January correspondence with the individual who
22 was the undercover, was that then recovered from the hard drive
23 of the computer?

24 MR. ROSENSAFT: No, it was not.

25 THE COURT: That was not.

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1 MR. ROSENSAFT: It was not. It was on the computer of
2 the undercover officer, obviously.

3 THE COURT: That's what I understand. So the
4 examination of the computer doesn't provide support one way or
5 the other whether this was one instance or a pattern of
6 instances stemming -- going back over a period of years?

7 MR. ROSENSAFT: That's correct, your Honor.

8 THE COURT: Mr. Kurt, I'm sorry to interrupt you.

9 MR. KURT: That's fine, your Honor. In that regard, I
10 think if there had been a lot more, I would assume the
11 forensics would have found something; and I'm sure they did
12 their job, did it well, and looked through whatever they found.
13 I would have to agree that in the end there's no technical
14 answer to your question, unfortunately, and I would welcome you
15 to ask Mr. Archer about that.

16 THE COURT: All right, and I may well do that.

17 MR. KURT: So I've talked to you, your Honor, about
18 Mr. Archer's character and the good things about him and he has
19 said to me over and over on most occasions in a very emotional
20 state; that this was a terrible, terrible mistake that he made;
21 that he so much wishes that he could undo this mistake. He
22 regrets it. I have to tell you, your Honor, that I've never
23 seen a defendant as adamant with those kinds of feelings and
24 statements about their behavior. I can tell you that the
25 emotions that have surrounded those statements and those

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1 expressions certainly would indicate that this is a sincere
2 statement on Mr. Archer's behalf. This is just not something
3 that he's ginning up for sentencing and he's asked me to say to
4 the court that it's the real thing.

5 THE COURT: I will credit that. I think that's
6 relevant to 3553(a) with respect to characteristics of the
7 defendant. His sincere remorse is something that I think I
8 take into account, and it may be different from the remorse of
9 others in similar circumstances. Certainly, I have no reason
10 to doubt the sincerity of the remorse here. Certainly, it's
11 reflected in his letter to me. It's reflected in statements he
12 made to the social worker and to the psychiatrist and to you.

13 So, I'll hear from the government on this, but I think
14 I'll credit that, but there are other issues that are going to
15 the characteristics of the defendant that I want you to talk
16 about, including you may a point in your submissions that he
17 had deleted these things before he was arrested. So that
18 perhaps this differentiates him from other defendants. But at
19 the same time you told me that he would do this periodically,
20 so it doesn't necessarily give me confidence that he had put it
21 behind him. Rather, perhaps, he was just in sort of a dormant
22 phase.

23 MR. KURT: In all honesty, your Honor, and Mr. Archer
24 did tell me that this sort of cycle went on more than once, and
25 you're correct, your Honor, it's not as though we can stand

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1 here and tell you that this only happened one time and that he
2 deleted it. That's not exactly the case. I can tell you, and
3 I don't know how much the Court will be able to sense from
4 Mr. Archer, but I can tell you that I am utterly convinced that
5 Mr. Archer would never again view any pornography of any kind.

6 This criminal case, this situation, what he's put his
7 family through, has, to use an analogy, has been a two-by-four
8 smack across the head for him. It has really shot right to the
9 core of him in a lot of ways. Frankly, I don't think he even
10 wants to use a computer again in his life. We would welcome
11 that the Court would set that as any term of any kind of
12 supervised release.

13 THE COURT: Well, I would consider it. It seems to me
14 it's somewhat akin to sort of a gambler walking into a casino.

15 MR. KURT: I would agree. The thing sits there, and
16 it sits there as a temptation, I'm sure, and I think that would
17 be appropriate.

18 THE COURT: Let me ask you -- and maybe you're going
19 to get here -- but the factors that are listed in 3553(a)
20 include the need to protect the public from further crimes of
21 the defendant.

22 MR. KURT: Yes, sir.

23 THE COURT: Now, I've seen what the social worker had
24 to say, and I've seen what Dr. Forgac had to say, and they
25 suggest that he's not likely to be a recidivist; that he's not

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1 a pedophile or a child predator, the way those things are
2 typically defined, and it gives me some solace, I suppose. On
3 the other hand, I don't know that anybody can predict with
4 anything approaching reasonable certainty that this conduct
5 wouldn't start again, and that Mr. Archer wouldn't be a threat
6 to children. So address that point if you could.

7 MR. KURT: Sure. I agree, nobody can predict with any
8 sort of mathematical certainty. That's the world we live in,
9 and most certainly when we're in this setting where you, your
10 Honor, is trying to figure out who this is in front of you.
11 I've worked with Mr. Archer to figure that question out for
12 myself. Ms. Logsdon has done a lot of work with him.
13 Dr. Forgac has at some length and, clearly, yes, all we could
14 do is use our best judgment in that regard. I guess I would
15 point out to the Court that the offense of which Mr. Archer has
16 been convicted by his own admission, the Act of Congress has
17 established that it does not carry a mandatory minimum, so,
18 most certainly, I would think that one could not conclude
19 merely by his conviction of this offense that a prison term was
20 absolutely necessary in order to protect the public. I think
21 if the folks in Washington who had enacted the statute believed
22 that, then they would have put a mandatory minimum on this.

23 THE COURT: I hear you on that, Mr. Kurt, but, I mean,
24 the reality is it carries a ten year maximum sentence, and
25 under the guidelines, his range is eight to ten years. So, it

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1 puts him at the high end of sentences for conduct for which the
2 statute was passed, right?

3 MR. KURT: Correct.

4 THE COURT: So I guess I'm trying to figure out what
5 is it about this defendant and his conduct, about his
6 likelihood of recidivism or his treatment needs, etc., that
7 would differentiate him from another defendant who, under the
8 guidelines, would get a sentence like that. And sentences like
9 that get handed down with some frequency, I understand.

10 MR. KURT: I understand that. Well, your Honor, I
11 would ask the Court to look at the totality of the
12 circumstances with Mr. Archer, including his age, including the
13 fact that when his home was searched and his computer was
14 searched, there was not some extensive collection of child
15 pornography found. What was found was actually a small
16 minority of the pornography that he had had at one time on his
17 computer.

18 I pointed out to the Court in one of my submissions
19 that the investigating agent had filed an affidavit to obtain
20 the search warrant, and gave sort of her view of how people
21 with a pedophile tendency, how they keep their possessions with
22 respect to that kind of a thing, and that agent said that
23 typically such people have a collection of child pornography.
24 It's a very dear thing to them. They hold on to it. They
25 protect it. They don't want to lose it.

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1 In contrast, in this case, it's actually quite the
2 opposite. Mr. Archer deleted the pornography on his computer,
3 all of it, including the small amount of child pornography. He
4 had no other child pornography in his house. He's done nothing
5 in his lifetime that would suggest to the Court or anybody that
6 he actually has an ongoing pathological attachment to small
7 children. In view of all that, and in view of his lack of a
8 criminal record, in view of really the breakdown -- I have to
9 use the word breakdown that he has suffered as a result of all
10 of this, I just think that it's highly, highly unlikely that he
11 will ever even consider any of this kind of conduct again.
12 It's just -- I don't see it happening.

13 THE COURT: Talk to me, if you would, about one of the
14 other factors is the need to provide the defendant with
15 educational, vocational training, medical care or other
16 correctional treatment in the most effective manner.

17 MR. KURT: Yes.

18 THE COURT: There are facilities, certainly federal
19 facilities, that have pretty good programs for this kind of
20 thing.

21 MR. KURT: I'm aware of that, your Honor. In
22 fairness, I know the presentence report pointed out a facility
23 in Massachusetts, Devens, Massachusetts. That's one
24 possibility. At the same time I agree that Mr. Archer does
25 need some supervision, some treatment in that regard. Just

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1 based on what the Court has before it, I think clearly that
2 would be appropriate. I guess the question is does he need to
3 be put in prison for a lengthy amount of time to achieve that?
4 I know that in the Northwest Ohio area, as anywhere else, there
5 are treatment programs for people who have been convicted of
6 this kind of an offense, and it can be done while he's under
7 house arrest, while he's on supervised release for any length
8 of time.

9 THE COURT: Well, is he still seeing Ms. Logsdon?

10 MR. KURT: He is. Frankly, your Honor, I've talked to
11 Ms. Logsdon on several occasions. She's been working hard with
12 him. She was very concerned about his mental well-being all
13 through these proceedings and particularly this week. That's
14 been her focus, quite frankly. I'm not aware that she is any
15 specialist in the treatment of sex offenders. I believe she
16 has even told me that, but she knows of programs that are
17 available. I know they're out there and that could be
18 accomplished by the Court as a term of supervised release.

19 THE COURT: The other considerations that you
20 acknowledge, but we haven't talked about much, is the need to
21 impose a sentence that would reflect the seriousness of the
22 offense, to promote respect for the law, to provide a just
23 punishment for the offense, to afford adequate deterrence to
24 criminal conduct as general deterrence, not specific
25 deterrence. And talk to me about those. You're proposing a

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1 sentence of a year or so, a year or two in jail. How do those
2 considerations, how are they satisfied by the sentence that
3 you're proposing?

4 MR. KURT: Your Honor, I guess one of the things I
5 would point out to the Court, there's some language in the Gall
6 opinion that just kind of struck me. I found it to be very
7 satisfying language in terms of what you as the judge is faced
8 with as a human being in imposing a sentence and what the
9 courts are faced with. This may be a little bit strong
10 language, and I don't intend it to be that way, but the Supreme
11 Court quoted, I believe, the district judge in the Gall case as
12 saying that: The sentence of imprisonment may work to promote
13 not respect but derision of the law if the law is viewed as
14 merely a means to dispense harsh punishment without taking into
15 account the real conduct and the circumstances involved in the
16 sentencing.

17 So I guess what I would say, your Honor, it is a very
18 serious offense. I am aware that there are many cases, many
19 cases of egregious behavior, not that Mr. Archer's behavior was
20 not egregious at some level, but there are many cases with far
21 more evil to them, if you will, and, again, I'm speaking only
22 in mitigation, I'm not trying to excuse what he has done, and
23 these cases are all going to fall basically under this law,
24 perhaps something a little more stringent.

25 But I submit to you, your Honor, the courts are going

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1 to have to kind of pick and choose a little bit, and come down
2 hard on the cases where it's really truly warranted to send
3 that message. Granted, you know, a shorter prison term rather
4 than a longer prison term sentence, obviously on the math of
5 it, sends a lesser message than a shorter prison term but that
6 doesn't mean, I don't think, that the court has to impose such
7 a Draconian sentence in every case. I honestly don't think
8 it's necessary. It's almost an economics thing. It's like
9 eventually there will be the opportunity before the courts --
10 there is the opportunity, unfortunately, for the courts to send
11 this message loud and clear with lengthy prison terms. It
12 doesn't mean it has to be every case, and it doesn't have to be
13 in this case.

14 THE COURT: I understand that. I've got to commend
15 you for everything you submitted. It was very helpful. The
16 one thing I didn't see, and it may be because there isn't much
17 out there, but other cases in this district or other districts
18 in which departures were granted or in which sentences were
19 fashioned that were lower than the guidelines for comparable
20 conduct.

21 MR. KURT: Your Honor, I tried to find cases, and I'm
22 sure I could have spent more time, but I did try to find cases
23 in the Second Circuit that talk about the actual outcomes.
24 Unfortunately, the cases I came across tended to have a lot of
25 technical issues in them as opposed to just pure, straight-up

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1 sentencing issues.

2 THE COURT: Well, it doesn't always get reported, I
3 understand that too.

4 MR. KURT: And maybe the Court is in a better
5 position, obviously, than I am in that regard.

6 THE COURT: Anything else you want to add with respect
7 to the fact of the 3553 factors?

8 MR. KURT: Well, I know the Court has a tough job on
9 its hands in this case. It's a balancing act, very clearly,
10 and I think there's more than enough here for the Court to show
11 some mercy, quite frankly. It's an old-fashioned term, to show
12 some mercy to Mr. Archer, and another term maybe we don't hear
13 about a lot but I would like to put before the Court is the
14 question of redemption. I believe in redemption. I believe
15 that people can, they don't always, but they can come around to
16 facing straight up what they've done to confront what it is in
17 themselves that has led, you know, to the criminal offense and
18 everything else here and to repudiate it. And I truly believe
19 that Mr. Archer is somebody who has done that. And he has
20 repudiated in his own mind, to the extent that he can, what he
21 has done and wants nothing more to do with this kind of conduct
22 ever again. I really do think that the record pretty clearly
23 reflects that.

24 Again, we're all stuck here. We're all human beings.
25 Not one of us can get inside the head of the other. So we can

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1 only go on the words we hear from a person and their action and
2 their history. Taking all of that into account, I truly think
3 that Mr. Archer is somebody who can be redeemed. He's seeking
4 to do that himself because he's probably harder on himself over
5 all of this in a moral sense than maybe the other people
6 involved in this case. So I would just ask the Court to take
7 that into consideration. He's 61-years-old. The kind of
8 sentence that's suggested by the guidelines, quite frankly,
9 would eat up much of the rest of his life.

10 I've sat down with his wife Thora, Mrs. Archer. This
11 is a very quiet, unassuming, gentle person. She does rely
12 greatly on Mr. Archer; not just physically. He does the
13 driving. It's a very traditional home, but I sense very
14 strongly her emotional dependence on Mr. Archer in a very
15 old-fashioned way, and, frankly, in quite a pleasant way, and,
16 your Honor, I'm going to suggest to you that to take him out of
17 that home, out of that relationship for any length of time, an
18 extended length of time would be devastating to her and quite
19 expensive to the children. They're grown children. So, I'd
20 ask the Court to consider all of that.

21 THE COURT: Well, I will certainly consider it, but
22 that's, unfortunately, true in many cases when a sentence is
23 imposed.

24 MR. KURT: I understand, your Honor.

25 THE COURT: Thank you, Mr. Kurt. I want to hear from

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1 the government, then I'll want to hear from Mr. Archer.

2 Mr. Rosensaft, it seems to me that certainly your
3 submission makes clear the government's view that a substantial
4 sentence is appropriate. I'm not clear on exactly whether the
5 government is saying that 97 to 121 months is that sentence. I
6 know the office's policy with respect to recommendations, and
7 I'm not going to ask you to outline it, but I'm trying to make
8 sure I understand your letter in which you argue in favor of
9 substantial sentence. You state that 97 to 121 months reflects
10 "the violent nature of these offenses and the goal of
11 protecting children from these heinous crimes." Then you go on
12 to acknowledge that defense counsel has identified "a number of
13 mitigating factors in this case," which seems to be a
14 concession of sorts that this is an atypical case in your view.
15 Is that correct?

16 MR. ROSENSAFT: That is correct, your Honor. This
17 case, looking at the nature of the crime itself and the
18 circumstances of the crime, I think is particularly egregious
19 and heinous. Looking at the defendant in terms of his lack of
20 criminal history, his age, and although we only have his own
21 words to gauge it by, his perceived remorse that he has over
22 it, I think, counterbalances that. I can be absolutely clear
23 though that I don't think a sentence of a year in prison, for
24 instance, would be sufficient in this case.

25 First, with regards to the possession of child

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1 pornography, Mr. Kurt, I know made reference to the fact that
2 he attempted to delete these items, and they were actually
3 recovered from his hard drive. They weren't completely erased.
4 I think your Honor is right. We can't be sure how many times
5 he's gone through this cycle. In fact, we know that for the
6 deletions he made in this case, he was scared by America Online
7 shutting off his account because of violating their policies.
8 So I don't think we can be sure whether he deleted the items
9 because he genuinely felt remorse at having them on his
10 computer or was scared of being caught and was scared that
11 America Online had caught him.

12 Now, there weren't other printed material found in his
13 house and the number of images was below 150. It was not the
14 10,000 collection, frankly, that I've seen in some other cases.
15 But that's taken into account in the guidelines. If this were
16 a case where there were 10,000 images, the guideline range
17 would be much, much higher. In another case that the defendant
18 is waiting to be sentenced where he just merely possessed child
19 pornography, the guidelines calculation has an amount of 17
20 years. So I think the guidelines range in this case does take
21 into account the still large, but somewhat limited, nature of
22 the defendant's collection in this case.

23 I don't want to suggest that the possession of child
24 pornography isn't heinous enough in and of itself because every
25 time someone trades these images or looks at these images, it

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1 re-victimizes the children again and again. And I know from
2 other cases and from hearing from victims in other cases who
3 were even able to identify the children that have been
4 victimized that this victimizes them throughout their entire
5 lives; and knowing that people are trading them and every time
6 another copy of these images is made, it gives these children
7 anguish, extreme anguish throughout their lives. So, I don't
8 want to suggest that that's not a heinous enough crime in and
9 of itself, but we also know in this case the defendant took the
10 extra step of contacting who he thought was a 14-year-old girl
11 trying to convince her to masturbate, even though she was
12 reluctant to, and tell him about it, and also sent her
13 pictures, not only of adult pornography, but of child
14 pornography, again, in an attempt to coerce her to masturbate
15 and tell him about it.

16 We only have evidence that he's done this once, but,
17 as your Honor pointed out, from the computer we really don't
18 know one way or the other whether this has happened before.
19 Honestly, your Honor can only make the decision based on what
20 the evidence does show; but the evidence does show that
21 Mr. Archer not only victimized these children by collecting
22 pornography and clicking on the computer, but he sought out a
23 child on the internet and actively tried to victimize a child
24 of 14 years of age.

25 And for those factors -- I understand that this is his

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1 first offense, and that he is 60 years old. With regards to
2 his family life, it does seem to be a stable family life, and
3 there are a lot of mitigating factors; but to suggest that a
4 sentence of one year would be sufficient, it's a little
5 incomprehensible considering the nature of the crime, and I
6 think it must be a much more substantial sentence in this case.

7 THE COURT: That's what I'm trying to get my arms
8 around; that neither party - and it's not a criticism - have
9 provided me much in the way of cases to see what comparable
10 defendants have received by way of departures or Draconian
11 sentences that would provide greater context for this case,
12 which I think would be useful. Now, there may not be that much
13 out there. These statutes are relatively new. Prosecutions
14 for them are relatively recent, and so it takes time to
15 accumulate a record on which one can make such a judgment, but
16 I think it would be probably useful. So I may ask you to do
17 that.

18 MR. ROSENSAFT: We'd be happy to, your Honor.

19 THE COURT: But, with respect to the issue of specific
20 deterrence, which is one of the factors under 3553, do you
21 share the confidence of the social worker and the psychologist
22 who evaluated Mr. Archer and have determined, or at least
23 opined, that he is not a likely recidivist and that he is not a
24 pedophile or child predator?

25 MR. ROSENSAFT: I can say we certainly have no

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1 evidence that he ever met children, and I can say I'm
2 encouraged by the reports received from the psychologist in
3 that regard. On the other hand, I also know from numerous
4 studies that have been done in this manner, and from the nature
5 of the crime itself, that the percentage of recidivism in these
6 cases is quite high. So, I can't say I have no confidence that
7 the defendant will never do this again. I think that in this
8 case, as opposed to a lot of cases, the report from the doctor,
9 combined with the full admittance of the defendant once he was
10 caught, does mitigate that somewhat though, and I think those
11 are mitigating factors I think in this case.

12 THE COURT: Another factor to be considered is the
13 need for care or treatment. So, I'd like to hear your views as
14 to whether that treatment is available in a prison setting or
15 whether it's more likely to be effective at home when
16 Mr. Archer is also supported by family members and other
17 institutions that he needs to bolster him.

18 MR. ROSENSAFT: To be honest, your Honor, in that
19 regard, I'm not sure I can give you an informed decision. I
20 know about the program that the probation officer referred to,
21 but I'm obviously not a doctor, and we haven't done our own
22 psychological examination of the defendant. So I wouldn't want
23 to speak without more knowledge on the area.

24 THE COURT: Anything else you want to add in light of
25 what Mr. Kurt said or in light of my questions?

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1 MR. ROSENSAFT: I don't believe so, your Honor, but I
2 understand this is a difficult case, and we're happy to provide
3 whatever information your Honor would like.

4 THE COURT: I'm not trying to pin you down, again,
5 Mr. Rosensaft. You've been very clear that you think the
6 sentence recommended by Mr. Kurt is inappropriate and it
7 doesn't meet the other factors to be considerate considered
8 under 3553(a), particularly, I would think, seriousness of the
9 offense, respect for the law, just punishment, and more general
10 deterrence. I understand those arguments. You don't need to
11 go into them in some detail --

12 MR. ROSENSAFT: That's correct, your Honor.

13 THE COURT: -- but your letter, again, seems to
14 indicate that 97 months be too much. I'm not asking you for a
15 sentencing recommendation, but, frankly, I would value your
16 thoughts as to what would be a just sentence or what would be
17 not an unjust sentence. Maybe that's a different question.
18 Every lawyer in this room has an obligation to seek justice. I
19 do; Mr. Kurt does; you do. You're in the department of
20 justice, after all. So I respect policies that offices reached
21 about not making sentencing recommendations. On the other
22 hand, I do think no policy can bind or gag an attorney so that
23 they are standing quietly while an unjust sentence is imposed.
24 So that's what I want to get from you as to what in your view
25 would be an unjust sentence? Do you think 97 months would be

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1 an unjust sentence?

2 MR. ROSENSAFT: Frankly, your Honor, I don't. I think
3 your Honor it would be reasonable in giving such a sentence. I
4 know I stated this in my letter, but the way the Sentencing
5 Guidelines gets to that range is by applying a number of
6 enhancements that are aggravating factors in this case, and the
7 Sentencing Commission has looked over thousands of cases in
8 order to determine the guidelines range and try to not create
9 sentencing disparities.

10 THE COURT: I understand that. I guess I'm really
11 focused on the 3553 considerations which I think are different,
12 and some of which we never really got to, when the guidelines
13 were mandatory, so they may factor in very differently now post
14 Booker world. So I take it face value what you said, you don't
15 think 97 months would be an unjust sentence. If you did think
16 so, I would want to know that.

17 MR. ROSENSAFT: I don't think so, your Honor. I think
18 your Honor would be reasonable in imposing that.

19 THE COURT: Mr. Archer, let me hear from you. And
20 take your time. I know this is stressful, no doubt. But I
21 want to hear from you just anything what you think would be
22 relevant to me as I try to figure out what is the appropriate
23 sentence. You've heard the conversation I've had with your
24 attorney and with the government's attorney, the considerations
25 that I'm obliged to consider and to give thought to. It's very

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1 important to me what you have to say and what you make of the
2 situation you're in.

3 THE DEFENDANT: First of all, your Honor, I'd just
4 like to say that this is a whole new environment for me. You
5 know, like my attorney says the first time, that I made a
6 terrible mistake. And I had some things jotted down, but he
7 wanted me to just speak from my heart. But I am truly
8 remorseful. I've never suffered over anything like this before
9 in my life. At the onset of when I was arrested, it was so
10 traumatic that I just -- I just had a melt-down, and it was so
11 horrible. I had no expectations of this coming or anything of
12 which was the idea on their part, but I truly, truly am sorry
13 for my terrible behavior. And now I've hurt my family, let
14 alone myself. This is not who I am or what I stand for, your
15 Honor. I've been a good person for 60 years, and I just
16 recently retired with my wife. This is not by any means how I
17 wanted to spend it.

18 As for why I did what I did, I think only a
19 professional could answer that question, but like I explained
20 to my lawyer, the only answer I could come up with was allowing
21 myself to get involved with pornography, any and all types of
22 pornography; adult is how I started with it. It's just like a
23 drug. You have no -- I had no intentions of harming anyone,
24 no, you know, no motive or anything. I just got involved with
25 this pornography, and this is where it led me, and I wish to

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1 God it hadn't. Without reading my paper that I wrote some
2 things down on, again, I want to tell you that I'm very, very
3 sorry for this behavior, and I'm begging you for mercy, your
4 Honor. Thank you.

5 THE COURT: Thank you, Mr. Archer. I know that was
6 not easy. My biggest concerns or the concerns I have to
7 satisfy myself on are, first and foremost, and we've talked
8 about you, and I think certainly you've led a law-abiding life
9 - more than that - a life in which you have been a reliable and
10 productive member of society. And I credit that. Certainly,
11 everything that's been submitted to the Court reveals that; not
12 just that you held a job, but that you were emotionally and
13 financially and in every way supportive of your family members
14 and your community. I think that's clear. I don't think
15 there's any dispute about that.

16 I've also -- you know, I take to heart what the
17 psychiatrist, psychologist, and social worker have to say about
18 the likelihood of recidivism and whether they would or, in this
19 case, Dr. Forgac would, identify you as someone who is a
20 pedophile or child predator. He seems to argue against that in
21 the negative. I saw that, and so it gives me some solace.

22 On the other hand, I think the foremost concern of the
23 Court is the protection of children, and so those are the
24 factors that we haven't talked much about, but those are the
25 factors that relate to respect for law, for general deterrence,

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1 so that your sentence and the sentence imposed in cases like
2 this may deter others from engaging in this kind of conduct and
3 victimizing the people who are victimized because this is not a
4 victimless crime.

5 Those are the things that I have to weigh and we
6 haven't talked as much about today, but I think in many ways
7 they are the first and foremost consideration of the Court in a
8 community and a society.

9 So, counsel, this may not be satisfying to you, but in
10 light of just everything you've told me, I would like to put
11 over the sentencing so I can reflect on what Mr. Archer had to
12 say, what counsel had to say, and to the extent that there are
13 additional submissions you would like to make with respect to
14 other sentences of other defendants, that would give some
15 context to this case. In the case of the government, the
16 quality or lack of quality of a federal program in
17 Massachusetts or elsewhere, I think those are relevant
18 considerations under 3553(a). I will say I have no great
19 desires to see the images in this case, but I think I may need
20 to given the seriousness of the conduct and the offense. I
21 have not seen them, so I guess I think I probably should before
22 I impose sentence.

23 So, what I'd like to do is put this over for a couple
24 of weeks, as much as a month. Mr. Archer is on bail.
25 Mr. Archer, I'm sure in some ways you hoped to resolve this

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1 today one way or the other. It must be a strain to be waiting.
2 I respect that, but I think it can only be to your benefit to
3 give me more time to think about this. So, unless there's an
4 objection, I'd like to put this over. Mr. Kurt?

5 MR. KURT: Your Honor, no objection at all. I very
6 much appreciate the Court's reasoning and thinking in that
7 regard. We'd be happy to put it over. I think in light of the
8 concerns that the Court has raised and the matters that are
9 important to the Court, we would be happy to make further
10 submission and try and get you some answers. I guess the tough
11 thing about finding other cases, it's really not just the post
12 Booker world, which is, what, I think only about two and a half
13 years, but it's the post Gall world -- in the Second Circuit is
14 not quite the same. In the Sixth Circuit where I generally
15 practice, the Court of Appeals was using the standard that was
16 rejected in Gall. I don't think the Second Circuit has been
17 using that, but, nonetheless, I think the very recentness of
18 that holding is going to make it a little difficult to find
19 meaningful cases to compare it to, but I'll be glad to do my
20 best.

21 THE COURT: I don't expect that there's going to be a
22 mother-load of cases.

23 MR. KURT: Sure.

24 THE COURT: But there may be some that are worth
25 bringing to the Court's attention. They may be distinguishable

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1 and they may not be particularly relevant or it may be that the
2 judges didn't consider the things that I would consider, but I
3 think more information and more precedent wouldn't be a bad
4 thing.

5 MR. KURT: No objection.

6 THE COURT: Mr. Rosensaft?

7 MR. ROSENSAFT: No objection from the government, your
8 Honor.

9 THE COURT: Mr. Archer, is that all right with you?

10 MR. KURT: Yes, sir.

11 THE COURT: I know it's an expense to come back here
12 as well, but under these circumstances, considering I did not
13 take your plea, and I did not preside over any of your prior
14 appearances, I also think it's important that I have time to
15 reflect on what you said and what I observed here today.

16 THE DEFENDANT: I appreciate that, your Honor.

17 THE COURT: Between two weeks and a month.

18 February 15 or thereabouts, is that all right?

19 MR. KURT: I know that February 15 is a good day. If
20 possible, if you have something early in the afternoon.

21 THE COURT: That way you can do it the same day?

22 MR. KURT: Coming in and out the same day. Maybe the
23 morning would be a little easier.

24 THE COURT: We'll work around you. I understand.

25 THE DEPUTY CLERK: Is a different day easier?

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1 THE COURT: Sort of midday is best?

2 MR. KURT: Early afternoon.

3 MR. ROSENSAFT: Your Honor, I am actually going to be
4 tied up in the afternoon. I can find someone to cover.

5 THE COURT: No. I want you here, Mr. Rosensaft.

6 THE DEPUTY CLERK: The 19th.

7 THE COURT: The 19th, would that work?

8 MR. ROSENSAFT: Yes, sir.

9 MR. KURT: Yes.

10 THE COURT: What time? Afternoon is preferable,
11 right?

12 MR. KURT: Yes.

13 THE COURT: 2:15?

14 MR. KURT: That's fine.

15 THE COURT: You don't have to submit anything, but if
16 you have things you'd like to submit, that would be helpful. I
17 don't think we need to recover ground we've covered today. I
18 want to assure you I've read everything you've sent. I've read
19 all the letters more than once. I don't think additional
20 letters are necessary. I don't think the points we've covered
21 today with respect to remorse and family circumstances and
22 those kind of things, I don't think they're really in dispute.
23 So let's do that. Thank you, all.

24 MR. KURT: Thank you very much, your Honor.

25 THE COURT: I apologize for my voice. Next time you

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1 won't recognize me. Thanks again.

2 MR. ROSENSAFT: Thank you, your Honor.

3 (Adjourned)

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